

REMARKS

Claims 1-3, 5-15, 17, 19-22, 24, 26 and 27 are now pending in the application. Claims 1-3, 5-15, 17, 19-22, 24, 26 and 27 stand rejected. Claims 1, 11, 19 and 27 have been amended. Support for the amendments can be found throughout the application, drawings and claims as originally filed and, as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 112

Claims 11 and 27 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention. Applicant has amended the claims, thus obviating the rejection.

REJECTION UNDER 35 U.S.C. § 102

Claims 1-3, 6-10, and 26 stand rejected under 35 U.S.C. § 102(b) as being anticipated by BIOMET brochure (engineering drawings submitted 7/22/1997) and cited in Applicant's IDS of 12/17/2003). Claims 19-22, and 24 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Sutter et al. (U.S. Pat. No. 4,328,593). In view of the amendments and comments herein, these rejections are respectfully traversed.

The Office cites a pair of surfaces of the BIOMET brochure (engineering drawings submitted 7/22/1997) as disclosing the claimed "pair of intersecting planar surfaces, said planar surfaces being generally parallel to the integral straight anchoring device." In this

regard, the Office cites the “second planar surface” (see page 5 of the Office Action mailed 10/25/2007) and the “first planar surface” as a pair of intersecting surfaces. Applicant traverses this characterization.

Applicant notes that in spite of the assertion to the contrary by the office, the “second surface” of the cited reference is curved and not planar as claimed. While Applicant readily concedes the surface is smooth, it is not flat or planar as claimed. Further, Applicant submits that, as described in the specification of the instant application, the planar surfaces function to prevent rotation of the head and rotationally position the extended articulating surface. This allows the physician to precisely position the extended articulate surface and prevent inadvertent rotation of the implant with respect to the humerus.

Additionally, Applicant respectfully submits that those skilled in the art would recognize the stem of the BIOMET reference as a morse taper which functions to couple the head to a female morse taper in an associate implanted stem and not configured to be implanted directly into the bone as claimed. As such, those skilled in the art would recognize that this surface is not shock peened, but is polished.

With respect to rejected Claims 19-22 and 24, the Examiner's attention is directed to independent Claim 19. Claim 19 has been amended to include the limitation that the extended articulating surface protrudes only from a portion of the resurfacing head. Applicant notes that Sutter does not teach this limitation.

Further, Applicant notes Claim 19 and its dependents contain the limitation “resecting a portion of the humeral head so as to form a pair of intersecting planar

surfaces, said surfaces being parallel to the hole.” Applicant submits that none of the cited references teach this limitation.

REJECTION UNDER 35 U.S.C. § 103

Claims 11, 13, 15, 17 and 27 stand rejected under 35 U.S.C. § 103(a). Applicant respectfully traverses this rejection.

Applicant respectfully directs the Examiner’s attention to Claim 11. Claim 11 has been amended to clarify that the planar surfaces define a planar “V” shaped inner surface. Applicant notes that Claim 13 and its dependents contain the limitation that the flange extended surface has two planar inner surfaces. Further, the humeral head has a concave coupling surface. Applicant notes that neither of the references alone or together disclose an extended surface extending from only a portion of the head and having planar surfaces which prevent rotation of the head, while simultaneously having a head with a concave coupling surface.

With respect to Claim 27, Applicant notes that none of the references teach or disclose a flange surface having a planar upper surface which is generally parallel to the base surface.

Claims 1-3, 5-13, 14, 15, 17, 19-22, 24, 26 and 27 stand rejected under 35 U.S.C. § 103(a). Applicant respectfully traverses the Examiner’s characterization of the Long reference as teaching a pair of interior intersecting planar surfaces, said planar surfaces being generally parallel to the integral straight anchoring device. As described above regarding the BIOMET reference, the interior surface is a curved surface as opposed to a planar surface. Both independent Claim 1 and 13 contain this limitation.

With respect to Claim 19, Applicant notes that none of the references discuss "resecting a portion of the humeral head so as to form a pair of intersecting planar surfaces, said surfaces being parallel to the hole." As the references do not teach these limitations, the Examiner has not met the burden to form a prima facie obviousness rejection. Withdrawal of the rejections are respectfully requested.

CONCLUSION

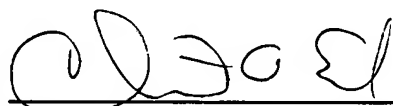
It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: Oct 31-07

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

CAE/smb

By: 
Christopher A. Eusebi, Reg. No. 44,672